

# ALLENTOWN SCHOOL DISTRICT

SECTION: PROFESSIONAL EMPLOYEES  
TITLE: FAMILY AND MEDICAL LEAVE  
ADOPTED: 11/16/06  
REVISED: 12/16/10

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## 435. FAMILY AND MEDICAL LEAVE

### I. General Policies

#### Section 1. Purpose

The purpose of this policy is to address specific leave of absence issues and to ensure the District's compliance with the Family Medical Leave Act, hereinafter referred to as FMLA. (29 U.S.C.A. 2601, et seq)

#### Section 2. Guidelines

The District is responsible for ensuring that all guidelines comply with the law. FMLA absences will be administered in conjunction with all other ASD policies and labor contracts. FMLA absences will be administered by the Superintendent, or a designee.

#### Section 3. Maintenance of Records

The District will comply with the record-keeping requirements of the FMLA.

#### Section 4. Required Notices

Required notices shall be posted by the District. Information regarding FMLA must be directed to: Director of Human Resources, 31 S. Penn St., Allentown, PA, 18102.

#### Section 5. Policy Notice

This Policy is intended to notify employees of the District of their rights and responsibilities under FMLA, including, but not limited to the following: (a) all qualifying leaves shall be unpaid and shall not exceed 12 weeks per year, except where specified in this policy; (b) qualifying leave will be counted against an employee's annual FMLA leave entitlement; (c) all requirements for an employee to furnish medical certification of the serious health condition (his/her own or that of a qualifying family member) underlying his/her leave and the consequences of failing to do so; (d) employees' rights to substitute paid leave and whether the employer will require substitution paid leave, and the conditions related to any substitution; (e) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments and the possible consequences for failure to make such payments on a timely basis; (f) any requirement for the employee to present a fitness certification to be restored to employment; (g) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial; (h) the employee's right to restoration to the position of employment held by the employee when the leave commenced; or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment; and (i) the employee's potential liability for payment of health insurance premiums paid by the employer

#### 435. FAMILY AND MEDICAL LEAVES

during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

#### Section 6. Definitions

To the extent that this Policy employs terms which are defined in the FMLA, those definitions are incorporated into this Policy.

#### Section 7. Entitlement

Any qualifying leave granted to an employee under this Policy shall count against an employee's annual FMLA leave entitlement.

#### Section 8. Eligible Employees

Only employees are entitled to FMLA leave.<sup>1</sup> An eligible employee is an employee who has satisfied each of the following conditions:

1. He or she has been employed by the District for at least twelve months, which need not have been consecutive, prior to the commencement of the leave;
2. He or she has worked for the District for at least 1250 hours over the twelve (12) month period immediately prior to the commencement of the leave, or is a full-time teacher;
3. A full-time school employee meets the hour requirement if he or she have been employed for a full year, regardless of hourly requirement; and
4. He or she works at a location within 75 miles of the District.

#### Section 9. Reasons for Leave

The District will grant FMLA leave only for one of the following reasons:

- a. The birth of a son or daughter of the employee and in order to care for such son or daughter, within one year after birth;
- b. The placement of a son or daughter with the employee for adoption or foster care, within one year of the adoption or transfer to foster care;
- c. The care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition<sup>2</sup>;
- d. A serious health condition that makes the employee unable to perform the functions of the position for that employee;
- e. The covered active duty or call to active duty of the employee's son, daughter or parent who is a member of a regular component of the U.S. Armed Forces for one or more qualifying exigencies.
- f. The care of a covered service member with a serious illness or injury, where the employee is the spouse, son, daughter, parent or "next of kin" of the covered service member.

#### Section 10. General Provisions for Length of Leave/Anniversary Date

For the purposes of providing twelve weeks of leave per year, FMLA leave shall be renewed on a yearly basis on July 1 of each year.

<sup>1</sup> Any ambiguity about the eligibility of an employee shall be determined pursuant to section 7 of the Fair Labor Standards Act of 1938.

<sup>2</sup> The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves-  
(A) inpatient care in a hospital, hospice, or residential medical care facility; or  
(B) continuing treatment by a health care provider.

## 435. FAMILY AND MEDICAL LEAVES

### Section 11. Presumption of FMLA Leave

Where an employee 1) is eligible to take FMLA leave, 2) has leave available and 3) is absent from work for more than three (3) consecutive days due to illness, the District will presume that FMLA time is intended to be taken and will designate the time as such.

### Section 12. Prior Notice

- a. Where FMLA leave is foreseeable, the employee shall give at least thirty days prior notice of leave, where practicable.
- b. Where leave is not foreseeable or must be taken on an emergency basis, the employee shall give notice as soon as practicable, defined as "within one or two days."
- c. Employees must provide periodic notices during their anticipated FMLA time regarding the employee's status and intent to return to work.
- d. When an employee gives notice of his or her need for FMLA leave, the District will inform the employee (1) of whether and how his/her rights and obligations under the FMLA will be affected including how the leave will be counted against the employee's annual FMLA leave, his/her leave entitlement and the employee's right to restoration to the same or equivalent job upon return and (2) of what may happen if the employee fails to meet his/her obligations.

### Section 13. Compliance

- a. As employers have a duty to designate leave as qualifying for FMLA, it is the responsibility of the employee to provide the District with enough information so as to assess whether such leave qualifies for FMLA. Thus, the District, may, at its discretion, request additional information, solely for the purpose of assessing leave as qualifying for FMLA or not.
- b. When the District is made aware that the employee is intending to take FMLA time, it will notify the employee whether it is or is not deeming the leave as FMLA leave and will inform the employee of his or her rights, including any benefits of employment security, and responsibilities under FMLA.
- c. If an employee does not receive a response to his or her request for FMLA leave within two days, the District requests that the employee, or a duly designated representative, notify the District that he or she has not received notice of the request for FMLA. Following determination of qualified leave, thereafter, the District will then immediately disseminate the FMLA information.

### Section 14. Spouses

A husband and wife employed by the district who are both eligible for FMLA leave will be limited to a combined total of twelve (12) workweeks per year when the leave is taken for the birth, adoption, foster placement or first-year care of a child or to care for a parent with a serious health condition. If the FMLA leave taken by a husband and wife employed by the district includes a combination of leave taken for the birth, adoption or foster placement of a child or to care for the child after birth, adoption or foster placement, and to care for a parent with a serious health condition, the leave will be limited to a combined total of twelve (12) workweeks per year, divided amongst both husband and wife and type of leave. A husband and wife employed by the district who are both eligible for FMLA leave will be limited to a combined total of twenty-six (26) workweeks per year if the leave is taken to care for a covered service member or is taken as a combination of leave to care for a covered service member and leave for the birth, adoption or

## 435. FAMILY AND MEDICAL LEAVES

foster placement of a child; to care for a child after birth, adoption or foster placement; or to care for a parent with a serious health condition. However, as per District policy and the provisions above, the portion of such combined leave that is taken to care for a covered service member or is taken as a combination of leave to care for a covered service member and leave for the birth, adoption or foster placement of a child; to care for a child after birth, adoption or foster placement; or to care for a parent with a serious health condition shall not exceed a combined total for husband and wife of twelve (12) workweeks per year.

### Section 15. Intermittent Leave or Reduced Leave Schedule

1. Intermittent leave or a reduced leave schedule may be taken for a serious health condition where medically necessary.
2. Intermittent leave may not be taken for the birth of a child or for placement of a child for adoption or foster care.
3. When intermittent leave or leave on a reduced leave schedule is requested based on planned medical treatment, the District may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, and which better accommodates recurring periods of leave than does the employee's regular position. Alternatively the District may alter an existing job to better accommodate the employee's need for intermittent or reduced leave. The alternative or altered position must have equivalent pay and benefits, but not equivalent duties.

### Section 16. Limitations on FMLA Leave

When FMLA leave is needed to care for a family member or for the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to disrupt the employer's operation unduly.

### Section 17. Military Leave (General)

Employees who take military leave will be credited for their leave time for the sole purposes of eligibility under FMLA: that is, an employee who takes military leave will be treated as if he or she had not taken leave for calculating hours or "full-year" status for eligibility, under Section 8, above. Any employee seeking to use his or her military leave time for purposes of eligibility under FMLA must comply with all standards established under the Uniform Services Employment and Reemployment Rights Act of 1994. Any matters relating to reemployment, and/or benefits, of an employee seeking to return to his former position, following military service, shall be resolved first under the legal guidelines established under USERRA. (38 U.S. § 4301, et. seq)("USERRA").

### Section 18. FMLA Military Leave/Care for Covered Service Member Definitions/Requirements

#### FMLA Requirements/Definitions for Covered Active Duty/Call to Active Duty:

Qualifying exigencies for covered active duty or call to active duty include: short-notice deployment, military events and related activities, certain childcare and related activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and any other event that the employer and employee agree constitute a qualifying exigency. Covered active duty in the case of a member of a regular component (e.g. not

## 435. FAMILY AND MEDICAL LEAVES

reserve or guard) of the Armed Forces, shall mean duty during the deployment of the member with the Armed Forces to a foreign country. Covered active duty in the case of a member of a reserve component of the Armed Forces, shall mean duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a) (13) (B) of title 10, United States Code.

### FMLA Requirements/Definitions for Care for a Covered Service Member

A "covered service member," for the purposes of this provision, shall mean a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

An employee may take up to 26 work weeks, measured forward from the first time an employee takes FMLA leave, for this purpose.

II. Responsibilities of Employees under FMLA. *Failure to comply with the requirements of FMLA can lead to a denial of benefits.*

### Section 1. Certification/Recertification

Generally, an employee must submit a required certification for FMLA leave. The District shall adopt specific procedures regarding certification requirements. The District shall also, in some cases, request periodic recertification, the requirements of which shall also be included in the District's procedures.

## III. FMLA and Benefits

### Section 1. Unpaid Leave

FMLA leave is unpaid leave.

### Section 2. Benefits During Leave

1. Whenever group health insurance is provided to an employee before the employee takes FMLA leave, the District will maintain the employee's health coverage under any group health plan during the leave on the same terms as if the employee continued to work.
2. Where FMLA leave is substituted for paid leave, the employee's share of group health plan premiums will be paid by the method normally used by payroll deduction.

### Section 3. Concurrent Leave

Where an employee uses paid leave of any kind, with the exception of military leave, that would otherwise qualify for FMLA leave, the District will deem FMLA leave to run concurrently with the paid leave.

### Section 4. Failure to Return to Work

If an employee fails to return to work at the conclusion of his/her FMLA leave, the District will recover

#### 435. FAMILY AND MEDICAL LEAVES

from the employee amounts it paid for health insurance for the employee during the leave. The District will not recover, however, amounts paid for health- insurance for an employee during FMLA leave if the employee fails to return to work because of a serious health condition of the employee, the employee's spouse, child or parent, or if the employee fails to return for other reasons beyond his/her control. If an employee fails to return to work because of a serious health condition, the District will require the employee to provide medical certification of the condition within 30 days of the District's request for such certification.

#### IV. Reinstatement after Leave

##### Section 1. Generally

- a. Any eligible employee who takes leave under FMLA for the intended purpose of the leave shall be entitled, on return from such leave, to be restored to the position of employment held by the employee when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
- b. The employee has no greater right to reinstatement or other benefits or conditions of employment than if the employee had been continuously employed during the leave period.
- c. Reinstatement may be denied on several bases, including but not limited to, the following:
  - i. The employee is deemed a "key employee" and to have the employee absent will cause the District "substantial and grievous harm;"
  - ii. The employee would otherwise have been terminated for independent grounds, such as "just cause" or pursuant to the Pennsylvania School Code;
  - iii. The employee is laid off as part of a general furlough or reduction-in-force during his or her absence on FMLA leave;
  - iv. The employee's position is eliminated and no similar position is available;
  - v. The employee was hired for a specific term or only to perform work on a discrete project, and the term or project has ended; and
  - vi. The employee has exhausted his FMLA leave and has continued his or her absence based on workers' compensation leave or other leave.

#### V. Leave Taken Near the End of an Academic Term (or Half-Year)

For those instructional employees whose leave is scheduled to end less than five (5) weeks before the end of the school year, the District may require the instructional employee to take unpaid additional time (called FMLA "periods of a particular duration") following FMLA leave, to the beginning of the next school year. This may occur if:

- The leave begins more than five weeks before the term's end, will last at least three weeks, and the employee would return to work within three weeks of the end of the term;
- The leave is for a purpose other than the employee's serious health condition, begins during the five-week period before semester's end, will last more than two weeks, and the employee would return during the two week period before the end of the term; or
- The leave is for a purpose other than the employee's own serious health condition, begins during the three-week period before the end of a term, and will last more than five days.

If an employee takes FMLA leave and his or her twelve weeks of entitlement end, but he or she is obligated to remain out on a "period of particular duration," pursuant to this Provision, the District will maintain his or her health benefits and will afford the employee his or her rights of reinstatement and other statutory entitlements until the end of the "period of particular duration."

## 435. FAMILY AND MEDICAL LEAVES

Time taken as a “period of particular duration” shall not count against the twelve (12) weeks of FMLA time afforded to the employee.

### VI. Use of Intermittent Leave or Reduced Leave Schedule

Where an eligible instructional employee:

- Requests “intermittent leave” or leave on a reduced leave schedule, based on foreseeable planned medical treatment, and
- Would be on leave for more than twenty (20) percent of the total number of working days over the period of the leave,

The District may require the employee to choose either:

1. To take leave for a period not greater than the duration of the planned treatment; or
2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position.

### VI. Compliance with the FMLA and Severability.

This Policy is intended to comply with the requirements of the FMLA. This policy shall be construed to be consistent with the FMLA statute and regulations.

This policy is severable. If any provisions herein are voided for any reason, all other provisions shall be enforced, in keeping with the FMLA. 29 U.S.C.S. § 2613, *et seq.*